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COMMERCIAL LAW 202
PAPER 2: PROPERTY AND SECURITY
COURSE OUTLINE
2010

Lecturer: Ms A. Haller-Barker

Faculty of Law

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Purpose of the Course

Property and Security is part of the Commercial Law 202 course (Col 202 Paper 2) offered at second year level to students registered in the Faculty of Commerce.

This part of the course aims at giving students an understanding of the general principles of law relating to property transactions and different types of security used in the commercial world to ensure the performance by the debtor of his/her contractual obligations to his/her creditor. The course also focuses on alternative forms of title which are used as forms of investments.

Lecturer

The course is lectured by Ms A. Haller-Barker. Students are welcome to meet with her to discuss any issues arising out of the course, and may arrange this by making an appointment with her either at the end of the lecture period or by e-mail at a.haller@ru.ac.za.

Credit Value

3.75 credits, which translates into 3 hours and forty-five minutes to be spent on this course per week. There is one 45-minute lecture per week. Students are required to do 3 hours of independent work in this course per week.

Assumptions of Prior Learning

Students should know and be able to do the following in order to benefit from this module:

- Be capable of communicating in written and spoken English;
- Have a basic knowledge of the South African legal system, the hierarchy of the courts and legal terminology;
- Be capable of independent learning;
- Be capable of solving problems by means of the application of legal principles extracted from case law and relevant legislation

Specific Outcomes

By the end of this part of the course, students should be able to:

- Describe the general principles of law relating to property transactions.
- Explain the purpose and function of personal and real security and other related limited security rights and the property statutes dealt with in the syllabus.
- Distinguish between mortgage and pledge.
- Understand the legal principles relating to the aspects of property law and security covered in this module.
- Apply the legal principles of security and property law to specific situations.

Resources

A course handout will be distributed to students during lectures. The purpose of the handout is to guide students through the module. However, students are advised to read further than the course handout. Whilst this course has no prescribed textbook, students may find the following texts useful:

- AJ Van der Walt and G J Pienaar, *Introduction to the Law of Property*, 4th Edition, Juta & Company, (2002).
- Silberberg and Schoeman's, *The Law of Property*, Fifth Edition (edited) by P J Bandenhorst, Juanita M Pienaar and Hanri Mostert published by Lexis Nexis Butterworths (2006).
- *Willers Principles of South African Law* 9th Edition published by Juta (2007)
General Editor
- Francois du Bois.
- Gibson – *South African Mercantile & Company Law* 8th Edition edited by G Visser et al Juta (2003) and Havenga et al

Assessment

Two tests will be written in the second semester, which will count 30% towards the final mark. One of these tests will cover the work on Property and Security.

The November examination will count 70% towards the final mark. This paper will be divided up equally with Mrs Davies' section.

Course Content

A. Law relating to property transactions

1. Introduction to the Law of Property

- Property Rights, Real Rights & Creditor's Rights
- Ownership, Possession & Holdership

2. Alternative Forms of Title

- Sectional Titles
- Share Block Schemes
- Time-sharing
- Retirement Schemes
- Alienation of Land Act

3. Rights

- Rights of purchasers
- Protection of tenants

B. Law of Security

1. Law of Mortgage and Pledge

- Parties to the mortgage or pledge
- Types of mortgages and pledge
- Effect of a mortgage or pledge
- Extinction of mortgages and pledges
- Foreclosure

2. Tacit securities – Liens

3. Law of Suretyship

- Definition
- Formation of contract
- The requirement of a valid principal debt
- Effect of cessions
- Defences of the surety
- The rights of the surety